

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Empowering Consumers to Prevent and Detect
Billing for Unauthorized Charges (“Cramming”)

Consumer Information and Disclosure

Truth-in-Billing and Billing Format

CG Docket Nos. 11-116, 09-158

CC Docket No. 98-170

DA 13-1807

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

GEOFFREY G. WHY, COMMISSIONER

1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

Dated: November 15, 2013

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Empowering Consumers to Prevent and Detect
Billing for Unauthorized Charges (“Cramming”)

Consumer Information and Disclosure

Truth-in-Billing and Billing Format

CG Docket Nos. 11-116, 09-158

CC Docket No. 98-170

DA 13-1807

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

The Massachusetts Department of Telecommunications and Cable (MDTC)¹ respectfully submits these comments in response to the Request to Refresh the Record Regarding “Cramming” (Refresh Request) released by the Federal Communications Commission (FCC) on August 27, 2013, in the above-referenced dockets.² The Refresh Request seeks to update the record on the FCC’s April 12, 2012, Order and Further Notice of Proposed Rulemaking (FNPRM) regarding consumer protections from cramming, which is the practice of placing unauthorized charges on consumers’ telephone bills by third parties.³

¹ The MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; GEN. LAWS ch. 166A, § 16. Silence on any matter not addressed in these comments does not connote agreement or opposition by the MDTC.

² *In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, CG Docket Nos. 11-116, 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-142 (rel. Apr. 27, 2012) (Order and FNPRM); Consumer and Governmental Affairs Bureau Seeks to Refresh the Record Regarding “Cramming,” CG Docket Nos. 11-116, 09-158 and CC Docket 09-170, *Public Notice*, DA 13-1807 (rel. Aug. 27, 2013) (Refresh Request).

³ *Id.* at ¶ 1.

I. SUMMARY

The MDTC renews its request that the FCC require all wireline and wireless providers to offer a third-party blocking service free of charge to their customers.⁴ While the MDTC supports the FCC's efforts to reduce incidents of wireline cramming, ample evidence exists that wireless cramming is a sufficient concern to merit action now.⁵ The MDTC is encouraged by the voluntary commitments made by major wireline carriers to cease including most third-party charges on telephone bills, and believes the FCC should require all carriers to provide free third-party blocking service to consumers.⁶ Further, the FCC should consider creating a "Do-Not-Cram" registry listing the phone numbers of consumers who prefer to block third-party charges on their bills, modeled on the successful national "Do-Not-Call" registry.

II. BACKGROUND OF THE ORDER, FNPRM AND REFRESH REQUEST.

On April 27, 2012, the FCC announced in its Order and FNPRM new cramming rules designed to protect traditional phone customers from the "mystery fees" that are included on phone bills, resulting from third party charges which the customers have not intended to receive.⁷ The FCC noted in its Order that "third-party billing – the practice that enables most cramming – is a \$2-billion-a-year-industry."⁸ Through the Order, the FCC requires wireline providers to organize telephone bills clearly and to separate out, in a distinct section of the bill, charges that

⁴ Comments of the Massachusetts Department of Telecommunications and Cable, filed June 25, 2012 (MDTC Comments), p. 1.

⁵ *Id.* at p. 2.

⁶ See Letter from Timothy McKone, Executive Vice President, Federal Relations, AT&T Services, Inc., to The Honorable John D. Rockefeller, Chairman, Committee on Commerce, Science & Transportation, United States Senate (Mar. 28, 2012) attaching letter from Mark A. Kerber, General Attorney, AT&T Services, Inc., to All AT&T Billing Solutions Services Customers (Mar. 28, 2012); Letter from Ian Dillner, Vice President, Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC (Mar. 23, 2012); News Release, *Klobuchar: CenturyLink Joins AT&T and Verizon in Putting a Stop to Cramming on Phone Bills* (Apr. 3, 2012), available at http://klobuchar.senate.gov/inthenews_detail.cfm?id=336476& (last visited Oct. 22, 2013) (collectively, voluntary commitments).

⁷ Order and FNPRM, ¶ 1.

⁸ *Id.* at ¶ 2.

are not for telecommunications services.⁹ The charges for these non-telecommunications services must be displayed clearly and conspicuously on the payment page.¹⁰ The telephone bill must identify any change in service provider.¹¹ The FCC also directed wireline providers that voluntarily offer a third-party blocking service to notify their customers of the availability of such service at their point of sale, on the web, and on the bills about this option.¹² The new rules adopted in the Order affect wireline telephone providers, but not Voice over Internet Protocol (VoIP) or wireless providers.¹³

The FNPRM sought comment on whether a mandatory opt-in approach, rather than the current voluntary approach, to blocking third-party charges is needed to protect consumers from cramming.¹⁴ The FCC also sought comment on whether wireless providers should be subject to the cramming rules.¹⁵ Additionally, the FCC asked for comment on an opt-in approach approved by a federal court in California, referred to herein as the Verizon California Cramming Settlement, in a class action lawsuit.¹⁶

The FCC, in its Refresh Request, now seeks to update the record of the FNRPM, and seeks comment on the implementation and success of the Voluntary Commitments.¹⁷ Moreover,

⁹ *Id.* at ¶ 64; Order and FNPRM, Appendix A.

¹⁰ *Id.*

¹¹ *Id.*

¹² Order and FNPRM, ¶ 52.

¹³ The MDTC joined with its neighboring New England regulatory commissions in this docket in calling for technology-neutral cramming rules, which would have applied equally to all wireline and wireless providers, including VoIP providers. *See* Joint Comments of the New England Conference of Public Utilities Commissioners – The Connecticut Department of Energy and Environmental Protection Public Utilities Regulatory Authority, the Maine Public Utilities Commission, the Massachusetts Department of Telecommunications and Cable, the New Hampshire Public Utilities Commission, the Vermont Department of Public Service, and the Vermont Public Service Board -- and the Rhode Island Division of Public Utilities and Carriers, filed Oct. 24, 2011 (NECPUC Comments), p. 3.

¹⁴ Order and FNPRM, ¶ 137.

¹⁵ *Id.* at ¶ 146.

¹⁶ *Id.* at ¶¶ 42, 138; Verizon California Cramming Settlement Agreement at 13-16.

¹⁷ Refresh Request at p. 2.

the FCC seeks comments on newly available information regarding the prevalence of cramming in wireless service.¹⁸

III. THE FCC SHOULD REQUIRE ALL PROVIDERS TO OFFER A THIRD-PARTY OPT-IN BLOCKING SERVICE FREE OF CHARGE.

While encouraged by recent voluntary efforts to block third-party billing for some wireline customers, the MDTC renews its request that the FCC require all wireline and wireless providers to offer a third-party blocking service free of charge.¹⁹ This would help ensure that all consumers, regardless of their underlying carrier, would be protected from unwanted charges at no cost to the consumer.

A. Massachusetts Consumers Will Benefit from a Mandatory Free Third-Party Charge Blocking.

The FCC should mandate that providers offer to consumers, at no charge, the ability to block third-party charges on all phone bills. While the FCC's proposed rules will require wireline providers to notify their customers *if* the provider offers a third-party charge blocking service, as the FCC's Order stopped short of requiring the offering of such a service.²⁰ Since that Order's issuance, several carriers have made voluntary commitments to end third-party billing. However, such protections extend only to customers of carriers who have made such voluntary commitments, and then only for so long as such carriers voluntarily continue to do so. The MDTC believes that such consumer protections should be mandatory, not voluntary. The FCC has acknowledged that third-party billing is the practice that enables most cramming.²¹ Ensuring consumers have the ability to block such practices will help prevent cramming. Therefore, the FCC should expand the existing cramming rules by mandating that all wireline providers either

¹⁸ *Id.*

¹⁹ NECPUC Comments, p. 3.

²⁰ Order and FNPRM, Appendix A, Final Rules, Sec. 64.2401(f).

²¹ *Id.* at ¶ 2.

exclude third-party charges from their bills, or offer the ability to block third-party charges at no cost to the consumer.

B. Wireless Consumers Should Be Included in the FCC's Cramming Protections.

The MDTC renews its assertion that cramming protections should be universally applied to all communications technologies, because the practice of third-party billing and the cramming that follows are not limited to wireline service. The MDTC, on its own and as part of NECPUC, advocated a technology-neutral approach to cramming rules in previous comments.²² At that time, the FCC found that the record lacked sufficient support to impose cramming rules for VoIP and wireless services.²³ Given the new concerns raised by several state Attorneys General, and expressed in a research paper from the University of Vermont highlighting the problems of mobile cramming, the MDTC urges the FCC to re-evaluate the growing evidence of wireless cramming, and the need for wireless cramming protections.²⁴

Of particular concern to the MDTC is the recognition by the state Attorneys General of how much wireless cramming resembles wireline cramming.²⁵ The Attorneys General are seeing many of the same “unfair and deceptive” practices once used in wireline cramming now appearing in wireless cramming.²⁶ And, the Attorneys General correctly conclude that mobile cramming is a growing problem as the number of households with wireline service decrease, and

²² MDTC comments, p. 5; NECPUC comments, p. 17.

²³ Order and FNPRM, ¶ 47.

²⁴ See Letter from the Attorneys General of Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Washington, and Wyoming to the Federal Trade Commission (June 24, 2013), <http://ftc.gov/os/comments/mobilecramming/564482-00015-86106.pdf> (last visited Oct. 22, 2013) (SAG Letter); *Mobile Phone Third Party Charge Authorization Study*, Jane Kolodinsky, PhD, Center for Rural Studies at the University of Vermont (May 5, 2013), <http://www.atg.state.vt.us/assets/files/Mobile Phone Third-Party Charge Authorization Study.pdf> (last visited Oct. 22, 2013).

²⁵ SAG Letter, p. 10.

²⁶ *Id.*

the number of households with wireless service increases.²⁷ Put another way, cramming is not technology sensitive in the sense that there is nothing particular to wireless service that protects consumers from the threat of cramming beyond that of other services. As the FCC has acknowledged, third-party billing is the practice that enables most cramming.²⁸ Therefore, the underlying technology of how such service is provided is irrelevant. It is the presence of third-party billing that gives rise to a risk of cramming. Whether reported incidences of cramming are present or not, third-party billing exists across all carrier platforms -- hence the MDTC urges the FCC to extend protections to all platforms before consumers of wireless and VoIP carriers experience the widespread cramming once seen with traditional wireline service.

IV. THE FCC SHOULD EXPLORE A “DO-NOT-CRAM” THIRD-PARTY CHARGE BLOCKING APPROACH.

The FCC seeks comment about the implementation and structure of any additional measures to prevent cramming.²⁹ As an alternative to an opt-in approach, which may be confusing to consumers, the MDTC encourages the FCC to consider creating a “Do-Not-Cram” approach modeled on the very successful “Do-Not-Call” Registry program that blocks unwanted phone calls.³⁰ A national Do-Not-Cram approach would provide consumers with an easy, familiar way to exclude themselves from unwanted third-party solicitations (and, consequently, charges). Consumers would quickly recognize and understand the purpose and mechanics of a Do-Not-Cram method, making them more willing to protect themselves before the charges appear on their bills.

Moreover, a Do-Not-Cram registry would establish equal protections for telecommunications consumers of any technology of service, including wireless and VoIP

²⁷ *Id.*

²⁸ Order and FNRPM, ¶ 2.

²⁹ FNPRM at ¶137.

³⁰ *See* MDTC Comments at p. 8.

services, without adding additional regulatory burdens to those carriers. Consumers could indicate their preference to prohibit unauthorized third-party charges from appearing on their bill by registering their phone number(s). The burden to comply with the list would be borne by the third-party billing entities that would pay for access to the list and must adhere to the consumer's preference. The success of the national Do-Not-Call list is ample evidence of the merits of such an approach. The MDTC urges the FCC to consider implementing a Do-Not-Cram approach to fairly, effectively and universally deal with the growing cramming problem.

V. CONCLUSION

The MDTC believes that the record on cramming supports expanding the FCC's rules to require carriers to provide third-party bill blocking at no charge to all customers. Additionally, the MDTC believes that cramming or the likelihood of cramming exists in all wireline, and wireless services, and therefore the FCC should extend its cramming protections to all voice communicating platforms. The MDTC believes that the most equitable way to do so is for the FCC to establish a national Do-Not-Cram registry. Such a registry would be successful because it is familiar and accessible to consumers, does not unduly burden carriers, and is sustained by fees from the third party billers whose practices give rise to the problem of cramming.

Respectfully submitted,

GEOFFREY G. WHY, COMMISSIONER

By: /s/ Lindsay DeRoche
Paul Abbott, General Counsel
Karlen Reed, Competition Director
Lindsay DeRoche, Staff Counsel

Massachusetts Department of
Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
Phone: 617-368-1112
lindsay.deroche@state.ma.us